

WISCONSIN SUPREME COURT
THURSDAY, APRIL 10, 2008
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which granted a writ of mandamus and directed a John Doe judge to permit the petitioner to subpoena witnesses. This case originated in Milwaukee County, Judge Marshall B. Murray, presiding.

2007AP230-W

[State ex rel. Hipp v. Murray](#)

This case examines whether judges have exclusive authority to issue subpoenas to produce witnesses in John Doe proceedings. The state has asked the Supreme Court to review a Court of Appeals' decision, which could alter the way John Doe subpoenas have historically been handled.

Some background on this case: In October 2006, Hipp, who is incarcerated on theft charges, requested a "John Doe" hearing pursuant to Wis. Stat. § 968.26. He alleged that a woman had taken valuable property from his apartment without his consent after he was arrested.

Milwaukee County Deputy District Attorney John Reddin took the position at a hearing on this case that subpoenas issued by the clerk of court -- at Hipp's request -- were invalid. Accordingly, he told some of these witnesses that they were not compelled to attend the hearing. Milwaukee County Circuit Court Judge Marshall B. Murray advised Hipp that, at a John Doe proceeding, neither the clerk nor Hipp had subpoena power -- only the John Doe judge. Accordingly, some of the witnesses Hipp wanted to testify did not appear to testify at the hearing. Judge Murray ruled that Hipp had not established probable cause to believe a crime had been committed.

Hipp filed a writ of mandamus to direct Judge Murray to give him a "proper" hearing under the John Doe statute. The Court of Appeals concluded that Hipp was entitled to have the clerk of courts issue subpoenas.

The State petitioned for review, taking the position that pursuant to statute and consistent with past-practice, only the John Doe judge may subpoena witnesses.

According to the state's petition for review: "For more than 150 years, John Doe proceedings have been authorized by statute to determine if a crime has been committed, and, if so, who committed the crime. John Doe judges have broad discretion in conducting John Doe proceedings, including whether to subpoena witnesses and the extent to which witnesses will be examined..."

A decision by the Supreme Court could determine if the John Doe statute permits a person filing a John Doe petition to compel the appearance of witnesses at a hearing by subpoenas that are not issued by the judge.